Pattern and Model Makers Association of Warren and Vicinity, Pattern Makers League of North America, AFL–CIO *and* Michigan Model Manufacturers Association, Inc. *and* Rite Industrial Model, Inc. *and* Paul H. Kurkowski *and* Wayne Russell *and* Daniel Corey. Cases 7–CB–7840, 7–CB–8090, 7–CB–8073, 7–CB–8090(2), and 7–CB–8129(7)

March 31, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On May 23, 1991, Administrative Law Judge Donald R. Holley issued the attached decision. Charging Party Rite Industrial Model, Inc. filed exceptions and a brief in support limited to the fining of employee Dennis Smith.

The Board has considered the decision and the record in light of the exceptions and brief, and is adopting the judge's rulings, findings, and conclusions[1] as modified below.

It is undisputed in this case that a union violates Section 8(b)(1)(A) of the Act by disciplining an employee for conduct engaged in after the employee has resigned from the union.[2] The issue is whether the Respondent (the Union) violated Section 8(b)(1)(A) of the Act by fining employee Dennis Smith for crossing a picket line to return to work, when the crossing occurred on the fourth day *after* Smith had mailed his resignation to the Union but a few hours *before* the Union actually received his resignation. As explained in section III below, in earlier cases the Board has established certain presumptions to aid in the determination of when a union member's mailed resignation is effective for the purpose of escaping the application of union rules, and it has also established an exception to those presumptions for cases in which the exact hour of the Union's receipt of the resignation is established by record evidence. As further explained, we are modifying the Board's standards for determining the time at which a mailed resignation is effective. Pursuant to that modification, we reverse the decision of the judge, who had dismissed the complaint as to the fine imposed on Smith, and we accordingly find that the Union's discipline of Smith violated the Act as alleged.

I. RELEVANT FACTUAL FINDINGS

Smith was a member of the Union and an employee of Rite Industrial Model, Inc. (Rite or the Charging Party). Rite was a member of a multiemployer association that was conducting negotiations with the Union for a new agreement in the spring of 1989.[3] On March 13, when negotiations broke down, the Union commenced a strike against members of the association, including Rite. As the strike wore on, some of the employees began resigning their memberships in the Union and returning to work for the struck employers.

Smith decided to take that course. He executed a resignation from the Union and dispatched it by certified mail on Thursday, March 30, 1989. He crossed the picket line at 7 a.m. the following Monday, April 3. The Union received his resignation on April 3 at some time after 9:30 a.m.[4]

In a letter dated September 6, the Union charged Smith with a violation of ''League Law 49, Clause 5'' for crossing the Union's picket line and returning to work for Rite during the strike, and stated that he was required to attend a meeting of the Union's executive committee concerning the matter. He did not attend, and he was found guilty by the committee and ultimately fined $4989 for violation of the League Law.

The Union subsequently sued Smith in state court to collect the fine. At the time of the hearing in this unfair labor practice proceeding, the state suit had not yet come to trial, but Smith had already incurred a bill of $1500 for the services of a lawyer to defend him in the suit. Smith had not yet made any payments to the lawyer.[5]

II. THE JUDGE'S DECISION

The judge noted that the Union's fine would violate Section 8(b)(1)(A) of the Act if it amounted to a penalty for conduct that Smith had engaged in *after* he had resigned from the Union. Applying a Board rule that union members' resignations are deemed effective only upon receipt by the union, he found that because Smith had crossed the picket line at 7 a.m., more than 2 hours before the Union actually received his resignation, he had crossed at a time when he was still a member of the Union. The judge acknowledged that, under Board precedents, it is presumed that a resignation deposited in the mail is received the day after mailing and that an additional presumption applies when the employee crosses on the day of receipt but the actual time of receipt is unknown. He noted, however, that none of those presumptions applies when, as here, the exact time of receipt is established by record evidence. Therefore, he concluded, Smith's resignation was not yet effective when he crossed the picket line, and the Union's discipline of Smith accordingly did not violate the Act.

[1] No exceptions were filed to any other finding by the judge.

[2] *NLRB v. Granite State Joint Board*, 409 U.S. 213, 217 (1972).

[3] All dates are in 1989 unless otherwise stated.

[4] The return receipt established the day of receipt, and credited testimony established that mail was not delivered to union offices before 9:30 a.m. at the earliest.

[5] The judge made no findings on the suit, but we make these factual findings on the basis of Smith's uncontroverted testimony.

III. ANALYSIS

A. *Rules Governing Effective Date for Resignations from a Union*

The judge correctly summarized Board law in the matter of union discipline imposed on employees for conduct engaged in after they have deposited their resignations in the mail. That law provides that mailed resignations are effective only upon receipt by the union.[6] In the absence of evidence establishing the exact day of receipt, the Board presumes that the resignation was received the day after mailing.[7] For cases in which an employee crosses a picket line on the day the mailed resignation is received, Board precedents are somewhat at variance. According to most it is presumed—in the absence of evidence establishing the exact time of receipt—that the resignation was received at some hour before the employee crossed the picket line.[8] According to others, the presumption is that the resignation was received at close of business on that day.[9]

Under existing Board law, it would appear that the Union's discipline of Smith was lawful, because the evidence of actual time and day of receipt showed that Smith crossed the picket line before the Union actually received his resignation. In the absence of such evidence, the discipline would have been unlawful under either line of the presumption cases, because Smith's resignation would have been deemed effective, at the latest, at the close of business on the Friday before the Monday on which he crossed the picket line. Thus, when Smith crossed the picket line, even though he had proof of his date of mailing and had waited for a day longer than required under the Board's presumptions, he returned to work under the risk that—unbeknownst to him—the Union might be able to prove receipt of the resignation at a later time. This uncertainty concerning whether he was still lawfully subject to the Union's power to discipline represents a serious flaw in the set of principles that the Board has heretofore applied in this area. In our view, we should attempt to construct standards that maximize the ability of parties involved in conduct affected by the standards to determine their legal rights. Where the rules touch on membership in a union, they should also reflect the congressional policy of voluntary unionism noted by the Supreme Court in *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985). For an employee seeking to exercise the Section 7 right to resign from a union and refrain from concerted activity by returning to work during a strike, it is important to be able to discern how soon after a resignation has been submitted by mail that resignation will be deemed effective. For a union seeking to enforce strike solidarity among its membership, it is important to know at the time when the commencement of disciplinary proceedings is contemplated whether the resignation became effective before the employee crossed the picket line.

In light of the foregoing considerations, we have reconsidered the Board's rules governing effective dates of mailed resignations for the purposes of immunity from union discipline, and we have formulated the following new standard.[10] We now hold that a labor organization may require that, as a condition of resignation from membership, a member provide written notification of the member's intention to resign from the labor organization. When the member personally serves an agent of the labor organization, including the business agent at the member's work place, as well as at the union hall, with a notification of resignation, the resignation shall be effective upon receipt. When service of the resignation is by mail, the effective time and date of the resignation shall be 12:01 a.m. local time on the day following the deposit in the mail. The day regarded as the date of deposit shall be determined by postmark. This shall apply to all methods of mail delivery, including but not limited to regular mail, certified mail, registered mail, and special delivery.

We believe that this set of rules will allow parties to assess the legal consequences of their conduct with a reasonable degree of certainty. An employee seeking to exercise his or her Section 7 rights to resign from the union and refrain from striking has no difficulty knowing when he personally delivered a written resignation to a union agent or when he deposited a resignation in the mail and can easily determine when it would be postmarked.[11] The employee need only wait until 1 minute past midnight to be able to cross the line without coming under the threat of union fines or other discipline. By contrast, a union which seeks to discipline its members for crossing a picket line does not necessarily need to know the exact date of resigna-

[6] *Hendricks-Miller Typographic Co.*, 240 NLRB 1082, 1098 fn. 29 (1979); *United Construction Workers Local 10 (Erhardt Construction Co.)*, 187 NLRB 762, 763 (1971).

[7] *Teamsters Local 610 (Browning-Ferris Industries)*, 264 NLRB 886, 899–900 (1982).

[8] *Iron Workers Local 627 (National Steel)*, 298 NLRB 29 fn. 1 (1990); *Machinists Lodge 1233 (General Dynamics)*, 284 NLRB 1101, 1102 fn. 9 (1987); *Teamsters Local 538 (Passavant Health Center)*, 275 NLRB 730 (1985); *Teamsters Local 610 (Browning-Ferris Industries)*, supra.

[9] *Electrical Workers IBEW Local 340 (Hulse Electric)*, 273 NLRB 428, 430 fn. 12 (1984), citing *American Nurses' Assn.*, 250 NLRB 1324, 1329 (1980). See also *United Construction Workers Local 10 (Erhardt Construction Co.)*, supra (union discipline not unlawful where imposed for picket line crossing on day resignations received and where record does not reveal exact time of receipt).

[10] We overrule those cases which have applied different union resignation rules to the extent they are incompatible with this standard.

[11] For example, if an employee deposits the resignation in a mailbox on a Sunday that mailbox indicates no Sunday pickup, the employee can reasonably expect that the letter will be postmarked on a Monday.

tion at the moment an employee crosses. It does, however, need to have this information when the time comes to investigate the possible violation of a union rule and start up its fine-imposing machinery. By the time a union is ready to do that with respect to an employee who resigned by mail, it is likely that it will have received the mailed resignation. A rule that allows the union to determine the effective date of a resignation by simply checking the postmark of what it received should satisfy the union's need for a reasonable degree of certainty about the lawfulness of proceeding to discipline an employee for crossing the picket line.

Applying those rules to the facts of this case, we hold that Smith's resignation was effective as of 12:01 a.m. on Friday, March 31, 1989, the day following deposit as established by the postmark on the certified receipt. He therefore was no longer a member of the Union when he crossed the picket line on Monday, and the Union violated Section 8(b)(1)(A) of the Act by fining him for that conduct, assuming that it is proper to apply the modified rules to that conduct. For the reasons set out in section B below, we find that we may properly find the violation.

B. *Retroactive Application of the Rule is Appropriate*

Under settled retroactivity doctrine, a new rule developed in an adjudication is generally applied to the parties in the case in which it is announced; an exception to retroactive application is made for cases in which it would work a ''manifest injustice.''[12] In determining whether retroactive application will produce manifest injustice, we consider the following factors: the reliance of the parties on preexisting law, the effect of retroactivity on accomplishment of the purposes of the underlying law which the decision refines, and any particular injustice to the losing party under retroactive application of the change of law.[13]

In considering those factors as applied to the facts of this case, we find that application of the new rules governing effective dates of union resignations will not work a manifest injustice. First, the Union did not enjoy complete certainty as to how it would fare under Board law when it fined Smith. Rather it would have known that if it was able to persuade the trier of fact as to actual time of receipt of the resignation, it could fine Smith for crossing 2 hours earlier. Otherwise the presumptions would apply and the fine would be unlawful.[14]

Second, the purpose of Section 8(b)(1)(A), the law at issue in this proceeding, is to protect employees from union coercion directed at their exercise of Section 7 rights; and, as noted above, an important policy of the Act is the principle of voluntary unionism. In our view, applying the modified rules announced in this case to the Union's fining of Smith furthers these statutory purposes. By retroactive application of the modified rules, we are precluding the imposition of union discipline on someone who had mailed, by certified mail, his resignation from union membership 3 days before he sought to exercise his rights free of union penalties. These purposes would not be served by keeping an employee in Smith's position subject to the Union's disciplinary machinery longer than absolutely necessary to protect the Union's interest in enforcing adherence to its rules by those who are clearly its members.

Finally, we see no great injustice to the Union in finding a violation here and requiring it to rescind the fine against Smith and reimburse him for the legal fees he incurred in defending the collection suit. It would at least seem a greater hardship to saddle Smith with the burden of paying a substantial fine for exercising what we have determined were his rights under Section 7 of the Act.

Accordingly, we grant the Charging Party's exception and amend the judge's Conclusions of Law and remedy as indicated below.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3.

''3. By imposing a court collectible fine upon employees Daniel Corey and Dennis Smith for crossing its picket line and returning to work for their employers after they had resigned their membership in the Union, the Respondent violated Section 8(b)(1)(A) of the Act.''

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[12] *NLRB v. Bufco Corp.*, 899 F.2d 608, 609 (7th Cir. 1990), quoting from *NLRB v. Chicago Marine Containers*, 745 F.2d 493, 499 (7th Cir. 1984); *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1081 (D.C. Cir. 1987) (en banc).

[13] *NLRB v. Bufco Corp.*, supra.

[14] It is not, in any event, entirely clear that the Union was carefully tailoring all of its actions to existing Board law. Thus, with respect to employee Daniel Corey, the judge credited testimony that his resignation had been deposited in the mail by March 27, that the person who had mailed it for Corey received a return receipt—almost surely for that letter—which was dated March 28 and signed by a union agent, and that the local post office customarily guaranteed overnight delivery for a letter transmitted between the locations at issue. The judge found this to constitute an independent factual basis for the Board's legal presumption that mailed resignations are received the next day. He thus implicitly discredited the testimony of a union witness that the Union did not receive the resignation at all. The judge further discredited union witnesses' testimony that Corey had crossed the picket line on March 28, finding instead that Corey did not cross until April 1, 5 days after the resignation was mailed. According to the judge's apparent findings (to which no exceptions have been filed), the Union fined Corey even though, under the Board's then existing law, this was a plainly unlawful penalty for postresignation conduct.

AMENDED REMEDY

Having found that the Respondent unlawfully imposed fines upon Daniel Corey, Martin Grapentin, and Dennis Smith, we will order the Respondent to rescind the fines, and to reimburse those individuals for any sums they may have paid for the fines levied against them, with interest computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and to expunge all records documenting the disciplinary action against them, and notify them in writing that this has been done. We will also order the Respondent to reimburse Dennis Smith for legal expenses he incurred in defending the collection suit filed against him.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below, and orders that the Respondent, Pattern and Model Makers Association of Warren and Vicinity, Pattern Makers League of North America, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Imposing court collectible fines upon Daniel Corey, Dennis Smith, or any other employee for crossing a picket line and returning to work for his employer after he has resigned his membership in the Union.''

2. Substitute the following for paragraph 2(a).

''(a) Rescind the fines imposed upon Daniel Corey, Dennis Smith, and Martin Grapentin, reimburse those individuals for any sums they may have paid for the fines levied against them in the manner set forth in the remedy and amended remedy sections of the judge's decision and this Decision and Order, respectively, and expunge all records documenting the disciplinary action taken against the named individuals and notify them in writing that this has been done.''

3. Add the following as paragraph 2(b) and renumber the remaining paragraphs.

''(b) Reimburse Dennis Smith for legal expenses he incurred in defending the collection suit against him.''

4. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT impose court collectible fines upon Daniel Corey, Dennis Smith, or any other employee for crossing a picket line and returning to work for their employers after they have resigned their membership in the Union.

WE WILL NOT restrain and coerce Rite Industrial Model, Inc. in the selection of its representation for the purposes of collective bargaining or the adjustment of grievances by imposing fines, or otherwise disciplining Martin Grapentin, or any other supervisor acting in like capacity, for crossing a picket line to perform supervisory functions, including adjustment of grievances.

WE WILL NOT threaten by letters to employee-members to impose heavy fines upon members who chose to resign their membership in the Union.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL NOT in any like or related manner restrain or coerce Rite Industrial Model, Inc., or any other employer engaged in commerce in its selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

WE WILL rescind the fines imposed upon Daniel Corey, Dennis Smith, and Martin Grapentin, reimburse those individuals for any sums they may have paid for the fines levied against them, with interest, and expunge all records documenting the disciplinary action taken against the named individuals and notify them in writing that this has been done.

WE WILL reimburse Dennis Smith for legal expenses he incurred in defending the collection suit brought against him.

PATTERN AND MODEL MAKERS ASSOCIATION OF WARREN AND VICINITY, PATTERN MAKERS LEAGUE OF NORTH AMERICA, AFL–CIO

Richard F. Czubaj, Esq. and *Janice Jones, Esq.*, for the General Counsel.

Christopher P. Legghio (Miller, Cohen, Martens & Ice, P.C.), of Southfield, Michigan, for the Respondent.

Craig S. Schwartz, Esq. (MacDonald and Goren), of Birmingham, Michigan, for the Charging Party Rite Industrial Model, Inc.

James Perry, Esq., of Detroit, Michigan, for the Charging Party Wolverine.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. On an original charge filed in Case 7–CB–7840 on March 21, 1989,[1] by Michigan Model Manufacturers Association, Inc.

[1] All date are 1989 unless otherwise indicated.

(Manufacturers Association) the Regional Director for Region 7 of the National Labor Relations Board issued a complaint against Pattern and Model Makers Association of Warren and Vicinity, Pattern Makers' League of North America, AFL–CIO (Respondent or the Union) on April 28. The complaint alleged that Respondent had violated Section 8(b)(1)(A) of the National Labor Relations Act by distributing a letter concerning union fines among employee-members. On July 21, the Regional Director approved an informal settlement agreement entered by the Respondent in that case.

On October 16, Paul Kurkowski filed the charge in Case 7–C–8073. Thereafter, on December 1, the Regional Director withdrew his approval of the July 21 informal settlement agreement, consolidated Cases 7–CB–7840 and 7–CB–8073 for trial, and issued an amended complaint dated December 1. The amended complaint realleged the matter set forth in the original complaint and, additionally, alleged that Respondent had violated Section 8(b)(1)(A) by fining Kurkowski for returning to work at Wolverine Products, Inc. after he had resigned his membership in the Union. Respondent filed timely answer denying it had engaged in the unfair labor practices alleged in the amended complaint.

The original charge in Case 7–CB–8090 was filed on November 6 by Rite Industrial Model, Inc. (Rite), and the original charge in Case 7–CB–8090(2) was filed by Wayne Russell on December 8. Thereafter, on December 26, the Regional Director consolidated Cases 7–CB–7840, 7–CB–8073, 7–CB–8090, and 7–CB–8090(2) for trial and issued an amended consolidated complaint, which realleged the matter set forth in the December 1 complaint, and, additionally, alleged that Respondent had violated Section 8(b)(1)(A) of the Act by fining employees Russell, Dennis Smith, and Jeffrey Grapentin for returning to work after they had resigned their membership in the Union, and that it violated Section 8(b)(1)(A) and (B) of the Act by fining Martin Grapentin, an alleged supervisor and an adjuster of grievances, for crossing a picket line and working at Rite during a strike. Respondent filed timely answer denying it had violated the Act as alleged.

On December 15, five additional employees filed charges against Respondent. On that date, Carl Chetosky filed the charge in Case 7–CB–8129(1), James Waun Jr. filed the charge in Case 7–CB–8129(2), Edward Stacey Jr. filed the charge in Case 7–CB–8129(3), Gary Macy filed the charge in Case 7–CB–8129(4), and Michael Macy filed the charge in Case 7–CB–8129(5). Thereafter, on December 18, Daniel Corey filed the charge in Case 7–CB–8129(7). Subsequently, on January 30, 1990, amended charges were filed in Cases 7–CB–8129(1), 7–CB–8129(2), 7–CB–8129(3), 7–CB–8129(4) and 7–CB–8129(5). On January 31, 1990, the Regional Director consolidated Cases 7–CB–7840, 7–CB–8090, 7–CB–8129(1) through (5), and 7–CB–8129(7) for trial and issued a second amended consolidated complaint. In addition to realleging the 8(b)(1)(A) and (B) violations set forth in the December 26 amended consolidated complaint, the January 31, 1990 complaint alleged that Respondent violated Section 8(b)(1)(A) of the Act by imposing fines on employees Chetosky, Waun, Stacey, Macy, and Corey for returning to work after they had resigned their membership in the Union. Respondent filed timely answer to the January 31, 1990 complaint denying paragraphs alleging the filing and service of the various changes, the commerce allegations of the complaint, and denying it had committed the violations alleged in the complaint.

By order dated April 3, 1990, the Regional Director severed, and dismissed, those portions of the January 31, 1990 second amended consolidated complaint which pertained to Cases 7–CB–8129 (1) through (5) and that portion of the charge in Case 7–CB–8090, which pertained to Jeffrey Grapentin.

On June 15, 1990, Respondent filed a Motion for Partial Summary Judgment with the Board seeking dismissal of the complaint allegations concerning the fines imposed on employees Russell and Kurkowski and concerning the March 20, 1989 letter to employee members. By Order dated July 11, 1990, the Board denied the motion.

The trial was held in this proceeding in Detroit, Michigan, on October 1 and 2, 1990. All parties appeared and were afforded full opportunity to participate. At the outset of the trial, Respondent amended its answer to admit: paragraphs 1(a) through 1(d), paragraphs 1(j) (filing and service of charges); and paragraphs 2(a), (b), and (c), 3(a), (b), and (c), and 5(a) and (b) of the complaint (commerce allegations). Additionally, counsel for General Counsel was permitted to amend paragraph 14 of the complaint by adding reference to paragraph 11 in paragraph 14.

The complaint in its final form alleges: that Respondent violated Section 8(b)(1)(A) by fining employees Wayne Russell, Paul Kurkowski, Daniel Corey, and Dennis Smith for postresignation conduct; that Respondent violated Section 8(b)(1)(A) and (B) by fining alleged Supervisor and Grievance Adjuster Martin Grapentin for working behind a picket line without resigning his membership; that Respondent violated Section 8(b)(1)(A) by failing to fulfill its duty of fair representation and its fiduciary duty by failing to give the fined members an accounting of how the fines were determined and the period of time they covered; and finally, that Respondent violated Section 8(b)(1)(A) by publishing a March 20, 1989 letter which threatened to fine members who crossed a picket line.

On the entire record, and from my observation of the witnesses who appeared to give testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

It is admitted, and I find, that Manufacturers Association, Rite and Wolverine Products, Inc. (Wolverine) are Michigan corporations which are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Manufacturers Association is an organization composed of employers engaged in the design and manufacture of models and tooling aids and exists for the purpose, inter alia, of representing its employer members in negotiating and administering collective-bargaining agreements with the Respond-

ent. Rite maintains its office and place of business at 3642 West 11 Mile Road in the city of Berkley, Michigan. It is engaged in the design and manufacture of models and tooling aids. It employes 15–20 bargaining unit employees and it is a member of Manufacturers Association. Wolverine maintains its office and place of business at 30233 Groesbeck Highway in the city of Roseville, Michigan. It is also engaged in the design and manufacture of models and tooling aids, and it is a member of Manufacturers Association.

In early March 1989, Manufacturers Association was engaged in bargaining with the Union for a new collective-bargaining agreement. At the time, some 14 shops which belonged to the Association employed approximately 700 employees who were represented by Respondent. Negotiations broke down in mid-March and the Union commenced a strike against the Manufacturers Association and its members on March 13.

After the strike began, Manufacturers Association sought by distributing pamphlets entitled ''UPDATE-89'' to employees to cause them to accept its last contract offer or to abandon the strike and return to work.[2] Thus, on March 17, it distributed a pamphlet entitled ''Employee's Rights,'' the body of which stated:

> Most people know that the National Labor Relations Act protects employees who engage in a lawful economic strike. But not everyone realizes that this protection is not, by any means, complete. In addition, many people don't know that the Act also protects employees who do not want to join the strike.
>
> Economic strikers can be permanently replaced. The courts have held that, when a strike is over, the employer may retain the striker replacements and need not lay them off to make room for returning strikers.
>
> Any employee who wants to cross the picket line and work during a strike is free to do so without interference, restraint or coercion from anyone. In addition, if the employee has resigned from the Union—*which he may do at any time*, notwithstanding any union constitutional provisions to the contrary—the union may not lawfully fine him.
>
> The United States Supreme Court has ruled that a union may not lawfully fine a former member who has resigned from the union. It may only fine persons who are members of the union. In addition, the Supreme Court has ruled that a union may not restrict the right of union members to resign from the union at any time, even during a strike. The Court held that a union constitutional or bylaw provision restricting the members' right to resign from the union violates the National Labor Relations Act. This decision was handed down in a case entitled *Pattern Makers League of North America v. NLRB.*
>
> From this case, and earlier Supreme Court decisions, the following rules are clear:
>
> (1) A union member is free to resign from the union at any time, even during a strike.
>
> (2) A union may not fine a former member who has resigned from the Union for returning to work during a strike.
>
> In addition, it is also clear that the union may not lawfully do any of the following:
>
> (1) Threatening employees with reprisals in the form of physical harm or loss of accrued pension benefits if the employees cross a picket line.
>
> (2) Imposing fines and excessive fees or dues as a condition of readmission to the union.
>
> (3) Attempting to cause an employee's discharge under a union shop clause in a contract for failing to pay fines or excessive fees or dues.
>
> Therefore, not only can the union not fine you for returning to work if you have resigned from the Union, it cannot adversely affect your employment for this reason after the strike is over.
>
> The union security clause in the contract, which will presumably be in effect again when and if this strike is eventually settled, does not require you to be a member of the union. It only requires that you tender to the union the periodic dues and initiation fees uniformly required as a condition of membership. So, after the strike is over, you may choose not to be a union member again and still continue as an employee of any of the union shops, receiving all of the contract fringe benefits, so long as you tender to the union the amount of the uniform union dues and initiation fees. This does not include fines.
>
> Of course, if you are not a union member, you may not vote at union meeting or exercise any of the other rights of union members to control the affairs of the union. However, the union will still have the same duty to represent you fairly that it has for its members.
>
> As you see, the National Labor Relations Act protects employees from unlawful actions of unions as well as companies.

On March 20, Respondent responded to the March 17 Manufacturers Association's pamphlet by distributing the following letter among employee-members.[3]

IMPORTANT

> In response to the Employers letter #10 dated, March 17, 1989, I will be brief and to the point.
>
> The companies are not aware of our League Laws or our internal By-Laws.
>
> The facts are that we have won in court and collected a *heavy* fine from a *former* member who chose to resign his membership.
>
> Stand united and don't fall victim to the *employers bullshit* that flows through the mail!
>
> Sincerely,
> /s/
> John Laughhunn
> Business Manager
>
> P.S. I wonder what it costs to resign from their Association, and what companies have the guts to do it. Maybe they should worry about their own members!

[2] See R. Exhs. G, H, and I.

[3] See G.C. Exh. 1(hh), attachment A.

When the strike began, Joseph Laughhunn was Respondent's business agent and Jon Winterhalter was its assistant business agent. As the strike progressed, a number of members resigned their membership in the Union and returned to work for their employers. Rosemary Bonafacio Stevens,[4] a secretary for the Union, testified that initially she opened envelopes which contained membership resignations, stamped them as to date received, and placed them on Laughhunn's desk. She credibly testified that, at some point, Laughhunn and Winterhalter instructed her to not accept certified mail, and she indicated she followed such instructions for about a week. Thereafter, she claims the secretaries were not allowed to open the mail for quite a while. Winterhalter indicated during his testimony that all resignations of membership were eventually given to him for processing.

B. *The Submission of Membership Resignations by Alleged Discriminatees and Related Events*

The complaint alleges that three Wolverine employees (Paul Kurkowski, Wayne Russell, and Daniel Corey) and one Rite employee (Dennis Smith) resigned their membership in the Union and were thereafter unlawfully fined for postresignation activity. The facts relating to the situations of the named employees are summarized below.

The record reveals that those employees employed by both Wolverine and Rite who expressed a desire to return to work during the strike were given prepared resignation of membership forms by their employers which stated the employee-member was resigning from the Union effective immediately.[5]

William Chase Jr., Wolverine's president, acknowledged that Manufacturers Association Attorney Townsend advised him that employees should transmit membership resignations by certified mail, and the record reveals the employees involved herein accomplished transmission of their membership resignations in that manner. The facts revealing the resignation action and subsequent experiences of the four above-named employees are set forth below.

1. Kurkowski and Russell

Kurkowski was employed by Wolverine before the strike and he remained employed by that entity at the time the hearing was held in this case.

Kurkowski credibly indicated that he obtained blank resignation of membership forms from Wolverine President Chase on April 14, and that he executed a resignation form on the same date. He testified that he joined employee Russell at a firm named Elfran the following morning (Saturday, April 15) and Russell then executed a resignation form which Kurkowski supplied. Kurkowski claims he then folded both resignation forms together and placed them in an envelope which contained the Union's name and address. He testified Russell agreed to mail the envelope, and that Russell showed him a receipt on Monday, April 17, which revealed he had mailed the envelope.

Russell corroborated Kurkowski's testimony by indicating he met Kurkowski at his father-in-law's shop on April 15, signed a membership resignation, placed it in an envelope with Kurkowski's resignation, and mailed the envelope himself. He testified he left Wolverine in June 1990, and is presently working elsewhere.

It is undisputed that Kurkowski and Russell both returned to work at Wolverine at 7 a.m. on Monday, April 17.

Jon Winterhalter admitted when he appeared to give testimony that he received Russell's resignation of membership on the morning of April 17. He denied that he received two resignations in a single envelope and he denied that the Union received a membership resignation from Kurkowski at any time. I do not credit such denials because Respondent's current business manager, Robert Stevens, testified that Winterhalter acknowledged in conversation with him that he had received two resignations in an envelope and he had thrown a resignation executed by Kurkowski away. Stevens was the more impressive witness and I credit his testimony fully.

Appearing as a witness for Respondent, Timothy George, supervisor of delivery and collection at the Warren, Michigan post office, testified that he supervises the letter carriers working in the above-described facility. He further indicated he sorts mail, including that for various delivery routes, and that his facility services Ryan Road and 13 Mile Road where the Union's office is located. George testified the first carrier out of his facility normally leaves at 9:30 a.m., and he could leave as late as 12:30 p.m. He stated it was not possible that mail would be delivered to the Union by 7 a.m. George testified a letter, including a registered letter, mailed from Mount Clemens, Michigan, and addressed to the Union in Warren, Michigan, would receive overnight delivery.

By letters dated July 5, 1989, the bodies of which are identical, Kurkowski and Russell were charged with violation of the Union's laws. The body of each letter stated:[6]

> The Executive Committee of the Warren Association of the Pattern Makers' League of North America is in receipt of evidence that states you have engaged in conduct detrimental to the interests of the Association, specifically, crossing the picket line and working for an employer with whom the Union is in the process of bargaining a contract.
>
> You are charged with violation of League Law 49, Clause 5.
>
> The Committee requests your attendance at its meeting on July 25, 1989, at 5:00 P.M. at the Union Office located at 31845 Ryan, Suite F, Warren, Michigan, to investigate the above charge. Be assured you shall be afforded a full and fair hearing, per League Law.
>
> Should you fail to attend, the Executive Committee will act on the evidence at hand and proceed according to League Law.
>
> Enclosed is a copy of the League Law Book which details how charges are processed and how the appeal process works.
>
> Should you have any questions, do not hesitate to call the Union Office at 939-6490 and speak with Bob Stevens, Business Manager or Jon Winterhalter, Assistant Business Manager.

Both employees failed to attend the July 25 meeting, and both claimed during their testimony that they felt they would

[4] Robert Stevens became the business agent of Respondent on May 18, 1989. He married Mrs. Stevens on August 18, 1989.

[5] See G.C. Exh. 7.

[6] See R. Exh. 11.

place themselves in jeopardy by attending. Subsequently, by letters dated August 10, the Union's executive committee advised them they had been fined. The body of both letters were identical, with exception of the amount of fine (Kurkowski—$6000 and Russell—$2076), and stated:[7]

> It is unfortunate that you have chosen not to respond to the charges made against you in our letter dated July 5, 1989.
>
> On the basis of evidence submitted the Executive Committee has found you guilty of League Law 49, Clause 5. Your action of crossing a picket line and going to work for an employer with whom the Union is engaged in bargaining is conduct detrimental to the interests of the Association.
>
> The Executive Committee at a special called meeting to be held at the Commonwealth Club, 30088 Dequindre, between 12 and 13 Mile Roads, on September 12, 1989 at 6:30 P.M. will give its findings and recommend to the membership a fine of $2,076.00 for your offense.
>
> Your right of appeal is outlined under League Law 51 of the Laws of the Pattern Makers League of North America. A copy of the League Law Book was enclosed with the July 5, 1989 letter.

Again, neither employee attended the September 12 membership meeting, and by identical letters (with exception of fine amounts) dated September 14, 1989, the executive committee informed them:[8]

> In our letter dated August 10, 1989, you were informed that the charges and fine against you would be submitted to the general membership at its meeting on September 12, 1989. This was done as stated and the membership approved the recommendation of the Executive Committee.
>
> Your fine of $2,076.00 is now due and payable to this office no later than October 16, 1989.
>
> Your right of appeal is outlined under League Law 5 of the Laws of the Pattern Makers League of North America. A copy of the League Law book was enclosed with the July 5, 1989 letter which you received.
>
> Should you have any questions concerning this matter, contact Business Manager, Robert Stevens or Assistant Business Manger, John Winterhalter at the Union Office at 939–6490.

With respect to the conduct of intraunion proceedings at which the charges against Kurkowski, Russell, and others charged with working behind a picket line were considered, Winterhalter testified that various members on the picket lines charged persons who crossed to return to work with violation of the League's laws to initiate the proceedings. Thereafter, Winterhalter testified he, at the request of the executive committee, investigated the charges by determining whether the person accused of crossing was a member at the time, and, if so, he spoke with the members who had claimed they saw a given member cross the picket line at given times. After concluding his investigation, he recommended to the executive committee that they proceed or refrain from proceeding on any given charge. He indicated further that Respondent schedule hearings on charges in such a manner as to hear five cases on dates when the charges were to be considered. Winterhalter admits, and the record reflects, that the eyewitnesses who allegedly observed different members cross the line to return to work did not appear before the executive committee to give testimony. Instead, Winterhalter simply appeared before the executive committee and related to them what others had told him about the actions of the members who had been charged. In event the actual witness(es) had recorded their observations, Winterhalter claimed he placed that evidence before the executive committee.

Turning to the proceedings involving Kurkowski and Russell, Winterhalter testified he instructed Wolverine's shop captain, Victor Tamala, to make a list of anyone who crossed the picket line, to note when they crossed, and to cause members who witnessed the crossing to sign any notes which were prepared. He claimed that Tamala and member Terry Saunders charged Kurkowski and Russell with crossing the picket line at 7 a.m. on April 17, and that they provided him with two pages of notes placed in the record as General Counsel's Exhibit 18, which noted, inter alia, that Russell and Kurkowski were ''in . . . in building full day'' on April 17.[9]

Winterhalter testified that on the date the executive committee convened to hear the charges against Kurkowski and Russell, he informed them Russell's resignation was received in the mail on April 17, but no resignation had been received from Kurkowski. He further indicated that he informed the executive committee that he had discussed the charges with Tamala and Saunders and they had informed him Kurkowski and Russell had crossed the line to return to work at 7 a.m. on April 17. Additionally, he claims he gave the executive committee the notes Tamala had prepared. As noted, supra, after hearing Winterhalter's remarks, the executive committee decided to recommend to the membership that Kurkowski and Russell be fined for crossing the line to return to work. With respect to the amount of fine, Winterhalter indicated the executive committee decided to fine all who were found to be guilty of crossing the line to work to work 150 times their normal dues.

It is undisputed that Kurkowski and Russell took no part in the intraunion proceedings, and that they did not appeal the decision to impose fines on them.

2. Daniel Corey

Corey was employed at Wolverine for 3 years. He was employed elsewhere at the time of the hearing.

The employee testified that he observed the picket line for about 2 weeks before deciding to return to work. Corey testified that he discussed his intention to resign his union membership and return to work with Chase, Wolverine's president, and the latter told him the Company would mail his resignation registered mail and he should not return to work until the receipt came back. The employee claims he executed a resignation of membership form on March 26 or 27, and that the Company mailed it for him. He testified Chase told him several days later that he had received the slip from the registered letter, and he could return to work the follow-

[7] See R. Exh. 12.

[8] See R. Exh. 14.

[9] Signing as witnesses were seven persons, including Saunders.

ing Monday, April 1. Corey identified the resignation form placed in the record as General Counsel's Exhibit 7 as being the type of form he completed on March 26 or 27. Counsel for the General Counsel placed in evidence as General Counsel's Exhibit 11, a domestic return receipt which reveals that Union Secretary Bonafacio signed for a certified article on March 28, 1989. While the card notes an article number, it makes no reference to Corey.

When he appeared as a witness, Chase testified he observed Corey sign a resignation of membership form, and he stated the practice was to have a salesman or a driver mail such forms by certified mail. He testified that no documents other than resignations were sent certified during the strike, and that he was 99-percent sure that he told Corey his receipt was back and he could come back to work.

Corey, like Kurkowski and Russell received a letter dated July 5, which informed him he was being charged with violation of League law 49, clause 5. The body of the letter is identical to those sent Kurkowski and Russell set forth, supra.[10] Corey chose not to respond to the charges, and by letter dated July 20, the Respondent's executive committee informed him they intended to recommend to the membership on August 8 that he be fined $3954.[11] He subsequently received a letter dated August 10 in which the executive committee indicated the fine was payable, and that he could appeal by following the procedure outlined in the League law book, which had been sent him with the July 5 letter.

Winterhalter's description of the intraunion proceedings involving Corey was quite abbreviated. He claimed that the notes allegedly prepared by Tamala, previously referred to and placed in the record as General Counsel's Exhibit 18, served as the basis for the executive committee's decision to fine Corey for crossing the picket line while still a member and returning to work. The document, which appears to have been prepared at a single time, rather than on dates extending from March 25 to April 17, purports to indicate that Corey (and others) were ''in Building Full Day'' on Tuesday, March 28. Winterhalter indicated he was the only person to testify against Corey before the executive committee and that he supported the charge against him by producing General Counsel's Exhibit 18.

Corey took no part in the intraunion proceedings against him and he has not appealed the decision to fine him.

3. Dennis Smith

Smith is employed by Rite. He testified that he observed the Union's picket line for the first 3 weeks of the strike. On March 30, he discussed returning to work with Jim Flanagan, Rite's president, and signed a resignation of membership letter. He claimed he personally mailed the letter to the Union by certified mail the same day. The return receipt he subsequently received, which was placed in evidence as General Counsel's Exhibit 3, reveals the resignation was delivered to the Union on April 3.

Smith returned to work at Rite at 7 a.m. on April 3. He stated no pickets were present at Rite when he went to work that day, but pickets were present when he left work that evening.

By letter dated September 6, 1989, Smith was charged by the Union's executive committee with violation of League law 49, clause 5, and he was required to attend an executive committee meeting on September 19 at 5:30 p.m. at the Union's office.[12] Smith did not attend the meeting, and, by letter dated September 27, he was informed the executive committee had found him guilty of violation of League Law 49, Clause 5; that it would recommend to the membership on October 10 that he be fined $4989; and that his right to appeal was outlined in League Law 51 which was set forth in a copy of the League law book which accompanied the letter.[13] Subsequently, by letter dated October 12, the executive committee informed Smith the membership had approved its recommendation, the fine was then due and payable, and that he could appeal under League Law 5. A second copy of the League Law Book was enclosed with the letter.[14] Smith did not appeal the imposition of the fine.

The record evidence relating to Respondent's decision to impose a fine on Smith for allegedly crossing the picket line to return to work at Rite, strongly suggests that Respondent's executive committee fined Smith for crossing the picket line and returning to work on or near March 20. During direct examination, Winterhalter indicated that, as with the other fine proceedings, he was the sole person to give information to the executive committee when the charges against Smith were treated. He claimed that Arnet Dorton, Rite's shop captain, Tom Houle, Michael Bagnowski, and Chris Wilson were present on the picket line on April 3, and that Houle told him he saw Smith cross the line to return to work that date, and he reported his conversation with Houle to the executive committee.[15] During cross-examination, Winterhalter produced notes in his possession, at counsel for the General Counsel's request, and he was questioned about a document placed in evidence as General Counsel's Exhibit 17, which purports to be a charge filed by Christopher Wilson which accused Smith of crossing the picket line on ''3–20–90'' and ''3–26–89.''[16] Winterhalter persisted during cross-examination in contending information provided by Houle, rather that Wilson, served as the basis for the decision to fine Smith. He claimed he felt Wilson's information was unreliable and it was therefore not used. Union counsel's position letter dated December 10, 1989, which was sent to the Region, states the following with respect to Smith:[17]

> To date, the Union has received no resignation letter from Dennis Smith. In fact, Mr. Smith has never resigned from the Union. Nonetheless, he returned to work sometime in March, 1989, shortly after the strike began.
>
> Mr. Smith never responded to Executive Committee notifications regarding the charges and never appeared

[10] See G.C. Exh. 8.

[11] See G.C. Exh. 9.

[12] See G.C. Exh. 4. The remainder of the body of the letter is identical to those which charged Kurkowski, Russell, and Corey with the same alleged violations.

[13] See R. Exh. 3.

[14] See R. Exh. 4.

[15] While Houle appeared to give testimony, no attempt was made by Respondent to cause him to corroborate Winterhalter's claim.

[16] See G.C. Exh. 17. It is obvious that someone wrote over the ''3–26–89'' line in such a manner as to cause the notation to read ''3–27–89.''

[17] See G.C. Exh. 20.

at this trial. Mr. Smith was found in violation of the Union Constitution and fined for his activities. Mr. Smith has never challenged this finding and has not appealed this decision.

Discussions and Analysis

Under the provisions of the Act, a union has the right to regulate its own internal affairs by enforcing properly adopted rules which reflect a legitimate union interest, impair no statutory labor policy, and are reasonably enforced against union members who are free to leave the Union and escape the rules. *NLRB v. Allis-Chalmers Mfg. Co*., 388 U.S. 175 (1967), and *Scofield v. NLRB*, 394 U.S. 423 (1969). In *Scofield*, the Supreme Court stated at 78:

> [W]e conclude that the Board was warranted in determining that when the union discipline does not interfere with the employee-employer relationship or otherwise violate a policy of the National Labor Relations Act, the Congress did not authorize it ''to evaluate the fairness of union discipline meted out to protect a legitimate union interest'' [citations omitted].

It is well settled that a union cannot lawfully discipline an employee-member for conduct he engaged in after he effectively resigned his full union membership. *Pattern Makers v. NLRB*, 473 U.S. 95 (1985). When determining whether resignations are effective for the purpose of escaping union rules, the Board follows an effective receipt rule rather than a deposit rule like that used in contract law for acceptances. *Teamsters Local 538 (Passavant Health Center)*, 275 NLRB 730 (1985); *Teamsters Local 610 (Browning-Ferris)*, 264 NLRB 886, 899–900 (1982). In the case of resignations deposited in the regular mails, the Board assumes, in the absence of contrary evidence, that the resignation is received the day after mailing and at an hour before the employee crossed the picket line. *Hendricks-Miller Typographic Co*., 240 NLRB 1082, 1088 (1979).

Here, the facts which I credit reveal that Kurkowski and Russell executed resignations on April 15, and Russell mailed the resignations in one envelope the same day. While Winterhalter admits the Union received Russell's resignation in the mail on April 17, he denies he received two resignations in a single envelope, and he denies he received a resignation from Kurkowski. As indicated, supra, I do not credit such denials; rather, I credit Stevens' assertion that Winterhalter informed him he he did receive two resignations in one envelope, and he destroyed Kurkowski's resignation. Apart from the envelope matter and the receipt of the Kurkowski resignation, however, Postal Supervisor George credibly testified the Union could not have received the Kurkowski and Russell resignations until after 9:30 a.m. As both employees admittedly crossed the picket line to return to work at 7 a.m. on April 17, they exposed themselves to lawful union discipline. The General Counsel contends I should nevertheless find that the fines imposed on the named individuals were unlawful because: the Union failed to inform its members of the consequences of violating its constitution and bylaws; it failed to inform them of the specifics of the charges; it did not inform them of the potential fine; and it did not tell them how the fine was determined. In my view, General Counsel's alternative argument touches on internal union matters which do not relate to the employee-employer relationship. I find them to be without merit. Such matters as well as the reasonableness of the amount of the fines imposed on Kurkowski and Russell are matters which are litigable in state court rather than in Board proceedings. Accordingly, I find the General Counsel failed to prove that the Union fined Kurkowski and Russell in violation of Section 8(b)(1)(A) of the Act.

Smith's situation is similar to that of Kurkowski and Russell. He signed and mailed his resignation on March 30, and it was received by the Union after 9:30 a.m. on April 3. The employee credibly testified that when he crossed the picket line at 7 a.m. on April 3, he saw no pickets, but pickets were present when he left work at quitting time. Having placed a return receipt in evidence which establishes that Smith's resignation was received by the Union on April 3, the General Counsel contends in brief that I should apply the presumption that Smith's resignation was received by the Union the day after it was mailed; that Smith could and should be able to rely on the fact that his resignation should have been received by Respondent on Friday prior to his returning to work on Monday. The short answer to the latter contention is that the Board follows a rule of effective receipt in resignation of union membership cases, and the instant record establishes the Union effectively received Smith's resignation after 9:30 a.m. on April 3. With respect to the sufficiency of the evidence of violation of its laws which was considered by the Union's executive committee, I deem that to be an internal union matter which may be reviewable by a state court rather than the Board. Accordingly, I find the General Counsel failed to prove that Respondent fined Smith in violation of Section 8(b)(1)(A) of the Act.

Corey's situation differs materially from that of the abovenamed employees. He credibly testified he executed a resignation on March 26 or 27, and that his employer mailed the resignation by certified mail to the Union that day. Chase, Wolverine's president, credibly testified he saw Corey execute the resignation, and the document would have been mailed that day by a salesman or a driver. Moreover, Chase testified he was 99-percent sure he later received a return receipt which he believed at the time to be the receipt for delivery of Corey's resignation and he then told Corey he could start work. While Winterhalter denied receiving a resignation from Corey, I conclude it must be presumed that Corey's resignation was received by the Union on March 28. In addition to the fact that Board precedent warrants such a presumption, Respondent witness George's testimony supports such a presumption. Although Winterhalter claimed that notes given him by Wolverine Picket Captain Tamala revealed that Corey crossed the picket line on March 28, and the executive committee relied on such notes when deciding to fine Corey, I note that Tamala was not called as a witness to rebut Corey's claim that he did not cross the picket line to return to work until April 1—5 days after Corey's resignation was mailed. In the circumstances, I find the notes, which were obviously prepared at one sitting rather than on various dates, to be a self-serving document which is entitled to no evidentiary value. I find that credible record evidence reveals the Respondent imposed a fine on Corey for postresignation conduct, and through such action it violated Section 8(b)(1)(A) of the Act as alleged.

C. *The Martin Grapentin Issues*

Martin Grapentin has been employed by Rite in excess of 17 years. For a period of about 3 years, he was Rite's plant superintendent. He relinquished that position and went back on the clock in April or May 1990.

While he was Rite's plant superintendent, Grapentin, together with the owner, Jim Flanagan, provided immediate supervision of the Company's 15–20 employees. He indicated he was involved in hiring, firing, layoffs, and the day-to-day supervision of the Company's operations. With respect to the hire of employees, Grapentin testified that Rite ran newspaper ads for employees during the strike; that he had to interview a lot of people; and that they hired some applicants. With respect to the separation of employees, Grapentin testified he laid off a number of employees with the intention of recalling them when business picked up, and he fired two employees. The first was Billy Forest who was fired shortly after he became plant superintendent and the last was an employee who was fired after the strike. In addition to hiring, firing, and laying off employees, Grapentin indicated he approved requests for time off, assigned employees to work overtime, and furnished employees with blueprints when assigning work to them. It is clear, and I find, that Martin Grapentin was a supervisor within the meaning of Section 2(11) of the Act.

Grapentin credibly testified that during his tenure as plant superintendent no grievances were filed by employees which involved the shop operations.[18] He indicated, however, that the shop captain brought employee complaints about job assignments, overtime assignments, vacation time scheduling, and safety matters to him from time to time and he attempted to resolve such complaints. He recalled that on several occasions the shop captain complained to him that nonunit employees were performing bargaining unit work, and he remedied the situation by causing the employees to cease performing such work. While Grapentin admitted he did not actually conduct bargaining for Rite, he sat in on one negotiation meeting after the strike, but he just listened and said nothing. Finally, he indicated he consulted with Flanagan concerning important problems, but stated he was frequently the sole individual in charge of the shop during Flanagan's absence.

Respondent produced Winterhalter and Arnet Dorton, Rite's shop captain, as witnesses to rebut the General Counsel's claim that Grapentin was a supervisor and a grievance adjuster. Winterhalter testified he attended two negotiation sessions at Rite after the strike and that Grapentin did not sit in on either session. He failed to indicate whether other negotiations which he did not attend were conducted by Respondent and Rite. Dorton claimed when he appeared to give testimony that Jim Flanagan was the man who made all the shop related decisions at Rite; that Grapentin was merely a ''leader.'' He claimed during direct examination that he dealt with Flanagan rather than Grapentin if there were any problems in the shop concerning people working there, and that he went to Grapentin with only normal shop problems, like if something needed fixed or repaired. During cross-examination, Dorton conceded he complained to Grapentin several times that a sweeper was performing bargaining unit work, and a similar complaint would have been brought to Grapentin's attention if a crib attendant was performing bargaining unit work. While he stated he did not recall discussing any overtime problems with Grapentin, he testified he would go to Grapentin if there were safety problems in the shop.

In sum, I conclude Dorton was not entirely candid when he described Grapentin's status or the extent of the supervisor's involvement in grievance adjustment during his tenure as plant superintendent. Grapentin's testimony, which I deem to be more credible, more fully describes the extent to which he handled employee complaints, and that testimony causes me to conclude that he regularly heard and adjusted minor employee problems before they were voiced in the form of formal grievances.

Grapentin testified that due to the fact that he occupied the plant superintendent position at Rite, and was no longer performing bargaining unit work, he telephoned Winterhalter during the fall of 1988 to inquire about getting out of the Union. During the conversation, honorable withdrawal was discussed, and Grapentin testified he understood Winterhalter would send him the appropriate form. When he had received nothing, he again telephoned Winterhalter in February before the strike began. At that time, Winterhalter apparently informed him he needed to submit a letter signed by both himself and his employer which verified his supervisory status and indicated his desire to honorably withdraw from the Union. During the conversation, Winterhalter told Grapentin he should experience no difficulty obtaining honorable withdrawal if he performed no bargaining unit work. Consequently, on March 13, 1989, Grapentin sent the Union's executive committee a letter signed by himself and Flanagan, Rite's president. The body of the letter states:[19]

> During the past three (3) years, I have been advancing my position at Rite Industrial Models, until now I am holding the title of plant superintendent. Mr. Flanagan and I have discussed the proper time to severe my relationship with the Union-because of the obvious conflict between being a loyal union supporter and a loyal Company supporter. The strike now in progress has aggravated our position, and I feel I must now make the choice that will best enhance my future. I submit this letter as a request to make an honorable withdrawal from the Union. Since I've always been a loyal union supporter, I want to part with good feelings among us all. As a member of Rite's management, I hope we can work together in the future to the benefit of all, and your best wishes would be sincerely appreciated.

Grapentin's request for honorable withdrawal was tabled by the executive committee on March 21 and it was denied by that body on May 30.

By letter dated September 6, 1989, Grapentin was informed he had been charged with violation of League law

[18] The record reveals one grievance involving vacation pay and a second involving a vacation pay fine were filed and processed at unstated times. Grapentin indicated the payroll manger in the office handled complaints involving money.

[19] See G.C. Exh. 5.

49, clause 5.[20] He did not respond to the letter and, by letter dated September 27, he was informed the executive committee had found him guilty of crossing a picket line and going to work for an employer, and it would recommend to the membership on October 10 that he be fined $6174.[21] Grapentin did not attend the October 10 meeting and he has not appealed the imposition of the fine on him. He testified he was notified at some point that a suit had been instituted against him, but he was later advised it had been dropped with prejudice.

In its December 10, 1989 position letter which was sent to Regional Director Gottfried, Respondent stated, inter alia,[22] ''During the strike, Martin Grapentin, who worked as a supervisor before the strike, performed substantial bargaining unit work for Rite Industrial.'' Winterhalter, who furnished the Union's executive committee with the information which caused it to find him guilty of the charges levied against him, indicated during his testimony that neither he nor any of the members on the picket line actually observed Grapentin perform bargaining unit work during the strike. Instead, Winterhalter testified that during his visits to the picket line at Rite during the strike, he observed Grapentin come to the refreshment truck wearing an apron, dirty clothes, and dirty shoes. Additionally, he indicated persons on the picket line reported they had seen Grapentin wearing dirty clothes and a dust mask during the strike. While Respondent witness Tom Houle testified he observed Grapentin standing near a mold with a file in his hand during the strike, Winterhalter testified he could not recall any observations Houle made about Grapentin when they conversed. Winterhalter admitted that neither he nor any other member actually observed Grapentin perform bargaining unit work during the strike. Moreover, he admitted the Rite shop is dusty and that Grapentin, who wore an apron before the strike, could have gotten dusty and dirty simply because he spent time in the shop.

Grapentin denied that he performed any bargaining unit work during the strike.

Discussion and Conclusions

The General Counsel contends Respondent could not lawfully fine Grapentin for working during the strike because he performed no bargaining unit work during the strike, and, in his capacity as a Section 2(11) supervisor, he adjusted grievances in the course and conduct of his duties. In the alternative, the General Counsel contends that by orally discussing ''honorable withdrawal'' with Winterhalter before the strike, Grapentin resigned his membership in the Union. The record clearly reveals the Union's executive committee must consider honorable withdrawal requests before withdrawal is permitted, as persons who are permitted to honorably withdraw are permitted to reinstate their membership upon payment of $5 rather than a new initiation fee. I find a request for honorable withdrawal does not constitute a resignation of membership.

Respondent contends it did not violate Section 8(b)(1)(B) of the Act when it imposed a fine on Grapentin because the record fails to reveal he adjusted grievances within the meaning of the Act, and, in any event, the record reveals he performed more than a minimal amount of bargaining unit work during the strike.

While the record reveals that Grapentin has not participated in the resolution of grievances filed pursuant to a collective-bargaining contract, it clearly reveals that he, in cooperation with Rite's shop captain, sought at all material times to resolve employee complaints about job assignments, overtime assignments, vacation scheduling, safety matters, and the performance of bargaining unit work by such employees as sweepers and crib attendants. Additionally, the record reveals that Grapentin is in sole charge of the Rite shop during owner Flanagan's absences, and that he regularly makes decisions to hire, fire, and lay off employees. Upon the facts enumerated, I find that Martin Grapentin has been, at all times material, a grievance adjuster within the meaning of Section 8(b)(1)(B) of the Act. *Operating Engineers Local 101 (St. Louis Bridge)*, 297 NLRB 485 (1989); *Sheet Metal Workers Local 68 (De Moss Co.)*, 298 NLRB 1000 (1990).

Although the Supreme Court held in *Florida Power*[23] that a union does not violate Section 8(b)(1)(B) of the Act when it disciplines a supervisor for performing rank-and-file bargaining unit work, it held, in *American Broadcasting Cos. (ABC)*,[24] that a union violated Section 8(b)(1)(B) of the Act by disciplining supervisors who crossed a picket line during a strike to perform only their regular supervisory duties, including the adjustment of grievances. Here, Grapentin credibly testified he performed no bargaining unit work while he was Rite's plant superintendent, and that he performed only his regular supervisory duties during the course of the strike. Winterhalter's claim that he observed the supervisor while he was wearing an apron and dirty clothes fails to establish that Grapentin was engaged in the performance of bargaining unit work. In the same vein, union witness Houle's claim that he observed Grapentin holding a file while he was near a mold fails to establish that Grapentin was then performing bargaining unit work. Indeed, while Winterhalter and Houle made the observations described above, both admitted that they could not truthfully say that Grapentin performed any bargaining unit work during the strike. In the circumstances described, I credit fully Grapentin's claim that he performed only his regular plant superintendent duties during the strike.

Noting the record reveals Respondent was seeking to negotiate a renewal contract with Rite at the time it imposed a fine on Grapentin for crossing its picket line to perform his normal supervisory duties, including the adjustment of grievances, I find its imposition of discipline on Grapentin will adversely affect the employer-representative's performance of grievance-adjusting duties. *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, 481 U.S. 573, 589–590 (1987). Accordingly, I find, as alleged, that by imposing discipline in the form of a fine which exceeded $6000 on Grapentin, Respondent violated Section 8(b)(1)(B) of the Act

[20] Presumably the letter, which was not placed in evidence, set a hearing date and was substantially identical to the charge letters sent other employee-members.

[21] See G.C. Exh. 6.

[22] G.C. Exh. 20.

[23] *Florida Power Co. v. Electrical Workers IBEW Local 641*, 417 U.S. 790 (1974).

[24] *American Broadcasting Cos. v. Writers Guild*, 437 U.S. 411 (1978).

as alleged. *American Broadcasting Cos. (ABC)*, supra; *St. Louis Bridge Co*., supra.

D. *The March 20, 1989 Letter*

The complaint alleges that by sending a letter dated March 20, 1989, which is attached to the complaint as Exhibit A, to employees, Respondent restrained and coerced employees in violation of Section 8(b)(1)(A) of the Act. Respondent admitted in its February 21, 1990 Answer ''that it sent Exhibit A to its members.''

As revealed, supra, in the portion of this decision entitled ''Background,'' Manufacturers Association distributed a pamphlet entitled ''Employee Rights'' to employees of its employer members on March 17. The pamphlet, inter alia, informed employees they could resign their membership in the Union and thereafter cross the picket line to return to work during the strike, and the Union would be unable to lawfully fine them for engaging in such activities. Subsequently, by letter to employee-members dated March 20, Respondent informed them:

IMPORTANT

> In response to the Employers letter #10 dated, March 17, 1989, I will be brief and to the point.
>
> The companies are not aware of our League Laws or our internal By-Laws.
>
> The facts are that we have won in court and collected a *heavy* fine from a *former* member who chose to resign his membership.
>
> Stand united and don't fall victim to the *employers bullshit* that flows through the mail!

The letter was signed by Joseph Laughunn, Respondent's business manager through April 1989.

The General Counsel contends the letter under discussion constitutes a threat to fine employees for exercising their Section 7 right to resign their union membership. Respondent, on the other hand, argues that the 1989 strike was like an election campaign ''because it involved a battle for the employees' hearts and minds,'' and, consequently, the letter should be treated like union campaign literature. I agree with the General Counsel and conclude Respondent's contention is without merit.

Since the Supreme Court issued its decision in *Pattern Makers v. NLRB*, 473 U.S. 95 (1985), the Board has uniformly held that union members have the right to elect to resign their membership at any time. While a union can lawfully discipline members for preresignation conduct, employees cannot be lawfully disciplined by a union for engaging in postresignation conduct. As observed by the General Counsel, the instant Respondent failed when promulgating the March 20 letter under discussion to limit its threat to discipline members who chose to resign and cross the picket line for only preresignation conduct. Instead, the letter clearly constitutes a threat to fine former members who chose to resign their membership. When reading the Union's letter, employees could logically conclude Respondent was stating in its letter that it could impose heavy fines upon them if they chose to resign their membership in the Union and cross its picket line to return to work. Accordingly, I find, as alleged, that by sending its March 20 letter to employee-members, Respondent sought to restrain and coerce them in the exercise of their Section 7 rights, and it thereby violated Section 8(b)(1)(A) of the Act as alleged.

CONCLUSIONS OF LAW

1. Wolverine and Rite are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By imposing a court collectible fine upon employee Daniel Corey for crossing its picket line and returning to work for his employer after he had resigned his membership in the Union, Respondent violated Section 8(b)(1)(A) of the Act.
4. By restraining coercing Rite Industrial Model, Inc. in the selection of its representation for the purposes of collective bargaining or the adjustment of grievances by fining Martin Grapentin for crossing a picket line to perform supervisory duties or grievance adjustment duties, Respondent violated Section 8(b)(1)(B) of the Act.
5. By threatening through a letter distributed to employee-members on March 20, 1989, to impose heavy fines upon members who chose to resign their membership in the Union, Respondent violated Section 8(b)(1)(A) of the Act.
6. The unfair labor practices found above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has been engaged in unfair labor practices, it is recommended that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found Respondent unlawfully imposed fines on Daniel Corey and Martin Grapentin, it is recommended it be required to rescind such fines, reimbursing such individuals for any sums they may have paid for the fines levied against them, with interest computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and that it be required to expunge all records documenting the disciplinary action taken against them, and notify them in writing that this has been done.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[25]

ORDER

The Respondent, Pattern and Model Makers Association of Warren and Vicinity, Pattern Makers League of North America, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Imposing court collectible fines upon Daniel Corey, or any other employee, for crossing a picket line and returning to work for his employer after he has resigned his membership in the Union.

[25] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Restraining and coercing Rite Industrial Model, Inc. in the selection of its representation for the purposes of collective bargaining or the adjustment of grievances by imposing fines, or otherwise disciplining Martin Grapentin, or any other supervisor acting in like capacity, for crossing a picket line to perform supervisory functions, including adjustment of grievances.

(c) Threatening by letters to employee-members to impose heavy fines on members who chose to resign their membership in the Union.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(e) In any like or related manner restraining or coercing Rite Industrial Model, Inc., or any other employer engaged in commerce in its selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the fines imposed on Daniel Corey and Martin Grapentin, reimburse said individuals for any sums they may have paid for the fines levied against them in the manner set forth in the remedy section of this decision, and remove all records documenting the disciplinary action taken against the named individuals and notify them in writing that this has been done.

(b) Post at its facility in Warren, Michigan, copies of the attached notice marked ''Appendix.''[26] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[26] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''